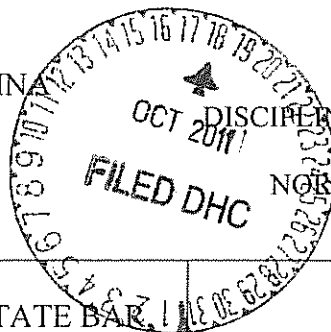


STATE OF NORTH CAROLINA

WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
11 DHC 29

THE NORTH CAROLINA STATE BAR, INC.

Plaintiff

v.

MICHAEL D. LEA, Attorney,

Defendant

COMPLAINT

Plaintiff, complaining of Defendant, alleges and says:

1. Plaintiff, the North Carolina State Bar ("Plaintiff" or "State Bar"), is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the rules and regulations of the North Carolina State Bar promulgated thereunder.

2. Defendant, Michael D. Lea ("Defendant" or "Lea"), was admitted to the North Carolina State Bar on 15 August 1969 and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.

3. During the times relevant herein, Lea actively engaged in the practice of law in the State of North Carolina and maintained a law office in Thomasville, Davidson County, North Carolina

4. In or around January 2008, Ronnell L. Penny ("Penny") retained Lea for representation in an adoption proceeding.

5. In or around June 2008, Lea filed with the Davidson County District Court a motion to serve notice by publication on the biological parents involved in the adoption.

6. In support of the June 2008 motion for service by publication, Lea attached to the motion an affidavit purportedly signed by Penny ("the affidavit") containing Penny's experience and expected testimony as to her lack of communication with and difficulty locating the biological parents.

7. Penny did not sign the affidavit and did not authorize anyone to sign the affidavit on her behalf.

8. Lea signed Penny's name to the affidavit without Penny's knowledge or consent.

9. Lea is a licensed notary in the State of North Carolina.

10. Lea notarized his signature of Penny's name on the affidavit.

11. Lea did not accurately depict Penny's experience or expected testimony in the affidavit.

12. By signing Penny's name to the affidavit without Penny's knowledge or consent, Lea committed the common law crime of forgery.

13. By filing the forged affidavit with the Davidson County District Court in Penny's adoption proceeding, Lea committed the common law crime of uttering a forged paper.

14. By notarizing Penny's forged signature on the affidavit, Lea violated N.C. Gen. Stat. § 10B-60(d)(1) which makes it a felony to "take[]an acknowledgement . . . if the notary knows it to be false or fraudulent."

15. Between July 2008 and March 2009, Penny made numerous inquiries of Lea requesting a status update on Lea's progress regarding her adoption proceeding.

16. Lea did not promptly respond to Penny's numerous inquiries.

17. In or around March 2009, Lea informed Penny of a hearing scheduled in her adoption proceeding for late March 2009.

18. Despite Penny's numerous inquiries requesting a status update after the March 2009 hearing, Lea did not respond to Penny's inquiries or otherwise communicate with Penny regarding the outcome of the March 2009 hearing or the status of the adoption proceeding.

19. Between March 2009 and July 2010, Lea made no significant progress in Penny's adoption proceeding.

20. After the March 2009 hearing, the Davidson County Clerk of Court ("the Clerk") left numerous telephone messages for Lea requesting action or information from Lea regarding his pursuit of Penny's adoption proceeding.

21. Lea did not respond to the Clerk's telephone messages.

22. In or around June 2010, Penny received notice from the Clerk that her adoption was set for dismissal and a hearing on the matter was scheduled for July 2010.

23. Penny contacted Lea regarding the July 2010 hearing, and Lea informed Penny that he would resolve the confusion.

24. Lea failed to appear at the July 2010 hearing.

25. Penny appeared at the July 2010 hearing and obtained from the Court, without Lea's or any other attorney's assistance, an extension of time to continue the adoption proceeding.

26. After the July 2010 hearing, Penny terminated Lea's representation of her interests in the adoption proceeding.

THEREFORE, the State Bar alleges that Defendant's foregoing actions constitute grounds for discipline pursuant to N.C.G.S. § 84-28(b)(2) in that he violated one or more of the Rules of Professional Conduct in effect at the time of the actions as follows:

- (a) By failing to meaningfully pursue and progress in his client's adoption proceeding, Lea failed to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3;
- (b) By failing to respond to his client's inquiries and by failing to maintain adequate communication with his client, Lea failed to keep his client reasonably informed in violation of Rule 1.4(a)(3) and failed to comply with reasonable requests for information in violation of Rule 1.4(a)(4);
- (c) By failing to respond to the Davidson County Clerk of Court's inquiries regarding his client's adoption proceeding, Lea engaged in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d);
- (d) By drafting an affidavit that did not accurately depict his client's experience or expected testimony, Lea engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) and engaged in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d);
- (e) By knowingly forging his client's signature to the affidavit, Lea committed a criminal act that reflects adversely on his honesty, trustworthiness, and fitness as a lawyer in violation of Rule 8.4(b), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), and engaged in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d);
- (f) By knowingly notarizing a forged affidavit, Lea committed a criminal act that reflects adversely on his honesty, trustworthiness, and fitness as a lawyer in violation of Rule 8.4(b), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c),

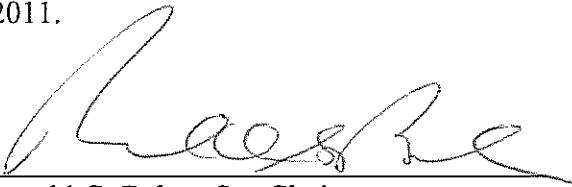
and engaged in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d); and

- (g) By filing a forged and inaccurate affidavit with the Davidson County District Court, Lea committed a criminal act that reflects adversely on his honesty, trustworthiness, and fitness as a lawyer in violation of Rule 8.4(b), engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), engaged in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(d), made a false statement of material fact to a tribunal in violation of Rule 3.3(a)(1), and falsified evidence in violation of Rule 3.4(b).

WHEREFORE, Plaintiff prays that:

- (1) Disciplinary action be taken against Defendant in accordance with N.C. Gen. Stat. § 84-28(a) and § .0114 of the Discipline and Disability Rules of the North Carolina State Bar (27 N.C.A.C. 1B § .0114), as the evidence on hearing may warrant;
- (2) Defendant be taxed with the administrative fees and costs permitted by law in connection with this proceeding; and
- (3) For such other and further relief as is appropriate.

This the 18 day of October, 2011.



Ronald G. Baker, Sr., Chair
Grievance Committee



Brian P.D. Oten
Deputy Counsel
State Bar Number 34140
North Carolina State Bar
P. O. Box 25908
Raleigh, NC 27611
(919) 828-4620, Ext. 226